

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Developing a Unified Intercarrier)	CC Docket No. 01-92
Compensation Regime)	

COMMENTS OF SPRINT CORPORATION

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Sprint Corporation, on behalf of its incumbent LEC, competitive LEC, long distance, and wireless divisions, hereby respectfully submits its comments in the above-captioned proceeding in response to the Notice of Proposed Rulemaking (NPRM) released April 27, 2001 (FCC 01-132).

I. INTRODUCTION AND SUMMARY.

In the instant NPRM, the Commission is considering the feasibility of adopting a unified approach to replace two existing forms of intercarrier compensation: access charges for long distance traffic, and reciprocal compensation for local traffic subject to section 251 of the Telecommunications Act of 1996.¹ The Commission notes that existing intercarrier compensation regimes could result or have resulted in regulatory arbitrage (NPRM, paras. 11-12); terminating access monopolies (para. 13); inefficient pricing of end user charges and thus inefficient network usage (para. 17); and distorted subscription decisions (para. 18). The Commission has sought comment on whether a

¹ Intercarrier compensation for traffic bound for Internet service providers (ISPs) would be governed for the next three years by the interim plan adopted in the Commission's *ISP Intercarrier Compensation Order* (CC Docket Nos. 96-98 and 99-68, *Order on Remand*

“bill and keep” regime can address these problems. Under a bill and keep system, each carrier recovers the cost of termination and origination (local loop and local switching costs) from its own end-user customers; costs to transport the call to the called party’s central office may be either borne entirely by the calling party’s carrier, or shared by the interconnecting carriers.

Sprint believes that a bill and keep intercarrier compensation regime offers substantial public interest benefits, and that concerns raised in the NPRM regarding the potential economic inefficiencies associated with a bill and keep plan are exaggerated (Section II below). We further believe that the Commission has legal authority to adopt a bill and keep regime (Section III). Therefore, Sprint supports the prompt implementation of bill and keep as regards local traffic (both CMRS and wireline) and interconnected local calls to ISPs. However, it is premature to adopt a bill and keep regime for long distance access traffic at this time (Section IV); existing implicit subsidies must be removed from access rates, rate shock to end users must be considered, and jurisdictional issues remain to be addressed. Therefore, Sprint recommends that the Commission defer implementation of a new intercarrier compensation regime for access traffic at least until the *CALLS Order*² is fully implemented, and preferably after an access reform plan is implemented for rate-of-return LECs. To minimize customer confusion and administrative expense, Sprint further suggests that if a unified intercarrier compensation regime is adopted to replace access charges, that such regime be adopted for all LECs

and Report and Order released April 27, 2001 (FCC 01-131)) (“*ISP Intercarrier Compensation Order*”).

² *In the Matter of Access Charge Reform, Sixth Report and Order*, 15 FCC Rcd 12962 (2000) (“*Calls Order*”).

(price cap and rate-of-return) and in all jurisdictions (federal and state) in a coordinated manner.

In Section V, Sprint presents its proposal to govern the allocation of transport costs for local interconnected traffic (including ISP calls). We recommend that at least one point of interconnection (POI) be established in each LATA. The ILEC would be responsible for transport costs when the POI and the end office from which the traffic originated are within the same local calling area.³ If the originating end office and POI are not within the same local calling area, the ILEC would be responsible for the cost of transporting to the CLEC up to a DS3 worth of traffic (8.9 million minutes of use per month) a distance of up to 20 miles. The CLEC would be responsible for transport costs associated with traffic above 8.9 million minutes per month, and when the POI and the originating end office are more than 20 miles apart. Sprint believes that this is a reasonable compromise which balances the ILECs' concern over controlling transport cost with the CLECs' need to interconnect and exchange traffic with the ILEC efficiently. In this section, Sprint also urges the Commission to affirmatively require ILECs to provide indirect interconnection and associated transiting functions. The Sprint plan can and should be adopted irrespective of whether the Commission ultimately decides to implement a bill and keep regime.

In Section VI, Sprint recommends that the Commission clarify that CLECs may establish virtual NXXs for dial-up ISP-bound traffic. Transport costs for this ISP-bound traffic would be allocated between the ILEC and the CLEC on the same basis as any

³ For purposes of wireless traffic, local calling is traffic that originates and terminates within the same MTA (47 C.F.R. Section 51.701(b)(2)).

other transport traffic: the ILEC pays for transport between the virtual NXX rate center and the POI if they are in the same local calling area; if the two points are not within the same local calling area, the ILEC pays transport costs for up to 8.9 million minutes if the distance between the two points is less than 20 miles, and the CLEC pays transport costs for traffic above 8.9 million minutes of use and if the distance is greater than 20 miles.

Finally, Sprint demonstrates that so long as the existing access charge regime exists, CMRS carriers are entitled to compensation in the form of access charges when they provide access service to IXC's for the purpose of terminating interexchange traffic (Section VII). As the Commission has previously found, CMRS carriers are telecommunications carriers that provide exchange access services, and there is no basis for allowing access customers (IXCs terminating long distance calls on the network of a CMRS carrier) to obtain this service free of charge.

* * * * *

Sprint urges the Commission to act on the foregoing recommendations as follows:

1. The Commission should implement bill and keep for all interconnected local calls (including ISP-bound and CMRS calls), together with Sprint's plan for establishing POIs and allocating transport costs, as soon as possible.
2. In the event there is any delay or doubt about the adoption of bill and keep for interconnected local calls, the Commission should proceed to adopt Sprint's POI/transport plan as a national standard to be used as long as reciprocal compensation mechanisms remain in place.

3. The Commission should promptly reaffirm its determination in the *1996 Local Competition Order* that CMRS providers are entitled to charge IXC's for exchange access.
4. The Commission should convene a Federal-State Joint Board to consider the implementation of bill and keep for interstate and intrastate access in a future phase of this proceeding to be taken up in mid-2003 (the halfway point for full implementation of the CALLS plan).

II. BILL AND KEEP GENERATES SIGNIFICANT PUBLIC INTEREST BENEFITS AND THUS SHOULD BE ADOPTED FOR LOCAL TRAFFIC.

The Commission has identified several potential efficiencies and offsetting inefficiencies of a bill and keep intercarrier compensation regime. On the one hand, bill and keep offers non-trivial savings on transaction costs and the elimination of an arbitrary (in an economic sense) allocation of common costs (NPRM, paras. 39 and 51). Sprint believes these efficiencies are significant and real, and discusses each in Section A below. On the other hand, the Commission expresses concern that bill and keep may be economically inefficient, based on three assumptions: (1) that it is the calling party who causes the cost of the call (including the cost of terminating the call) to be incurred; (2) that the cost of terminating a call is non-zero; and (3) that, in the presence of non-zero termination costs, a bill and keep arrangement will provide an originating carrier with an incentive to overuse the terminating carrier's facilities.⁴ As discussed in Section B

⁴ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order*, CC Docket Nos. 96-98 and 95-185 (released August 8, 1996), 11 FCC Rcd 15499, 16055 (para. 1112) (1996) ("*Local Competition First Report and Order*"). See also, instant NPRM, para. 20.

below, Sprint demonstrates that the first and third assumptions are flawed, and that the Commission's concerns about the economic inefficiencies of a bill and keep regime are accordingly exaggerated. Finally, in Section C, Sprint explains why it supports a third version of a bill and keep plan, rather than either the COBAK (Central Office Bill and Keep) or BASICS (Bill Access to Subscribers – Interconnection Costs Split) approach.

A. Bill and Keep Offers Significant Economic Efficiencies Resulting from Reduction of Transaction Costs and Elimination of the Arbitrary Allocation of Common Costs.

Under the existing reciprocal compensation regime, transaction costs are incurred when the terminating carrier must monitor, measure, and bill the originating carrier for terminating calls. Additional transaction costs are incurred in the setting of termination rates.⁵ It is Sprint's experience that these costs are not insignificant. An alternative regime that lowers or eliminates certain transaction costs is desirable, in terms of efficiency, because ultimately all transaction costs are passed on to end users in one form or another.

Under a bill and keep regime, terminating carriers would no longer incur the costs of monitoring, measuring, and billing originating carriers. Although the Commission points out (NPRM, para. 51) that in a bill and keep regime the terminating LEC bills its own customers instead of an originating carrier, it is important to note that the terminating LEC is already incurring the costs of billing with regard to its customers' local service. It is also worth noting that included in this local service rate are charges for

⁵ In his white paper, "*Bill and Keep at the Central Office As the Efficient Interconnection Regime*" (OPP Working Paper released December 2000), Patrick DeGraba offers further detailed discussion of additional inefficiencies that are caused by the *structure* of these

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the recovery of (average) termination costs that are incurred for traffic that originated and terminated on the carrier's own network.

Bill and keep also offers efficiencies in the elimination (or reduction) of arbitrary allocations of common costs among services. As stated in the NPRM (para. 39), inter-carrier calls are one of several services that are marketed to end users from which common costs are recovered.⁶ The existing reciprocal compensation regime requires that the calling party pay for a portion of the called party's network. The difficulty lies in determining what is the correct portion, since "regulators cannot know how benefits are distributed among parties" (para. 39). Temporarily setting aside the misperception (discussed in more detail below) that the distribution of benefits has some bearing on efficient cost recovery, the fact is that any allocation produced by regulators will be arbitrary simply due to incomplete information.

Under a bill and keep regime, the common costs associated with each network are recovered from the end users associated with each network. Although this does not eliminate the need to allocate common costs across services, it does remove one layer of allocation (allocation across networks) and the concomitant arbitrariness. Although the concept of cost causation is often difficult to apply to common costs (which by definition

rates. Sprint agrees with the conclusions drawn from DeGraba's analysis but limits its discussion here to the transaction cost issue.

⁶ The NPRM specifically refers to the loop as an example of such a common cost. Although the cost of the loop has historically been recovered from a portfolio of services, in purest economic terms the local loop is not a common cost but rather a direct cost that is incurred when a LEC provides a physical connection from the customer's premise to the first point of switching. Sprint will not, in these comments, recount the entire debate regarding the proper method of calculating and recovering the cost of the loop. Rather, Sprint simply wishes to indicate that the discussion here should not be interpreted as

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are not attributable to any single good or service), it is still possible to identify which *parties* are responsible for cost causation. Because common costs do not vary with output, it is impossible for a calling party to cause a common cost on a called party's network -- the cost exists whether the calling party calls or not. Therefore, the idea of allocating the common costs of the called party's network to the calling party is inconsistent with true economic efficiency. A bill and keep regime will help to reduce (or eliminate) this inefficiency, and thus is in the public interest.

B. The Commission's Concerns About the Inefficiencies Of A Bill and Keep Regime Are Exaggerated.

The Commission has argued that if termination costs are non-zero, a bill and keep arrangement will cause an originating carrier to overuse a terminating carrier's network, and that the originating carrier will go so far as to seek out "customers that primarily originate traffic."⁷ In order to address the validity of this assumption, it is necessary to answer the following questions: First, what are the benefits that accrue to a carrier if it seeks out customers who primarily originate traffic? Second, what is the likelihood that carriers would be successful in attracting these customers and thus be able to enjoy these benefits? In other words, what is the probability that this potential inefficiency would actually be realized?

At the risk of misinterpreting the *Local Competition First Report and Order*, Sprint believes that the Commission's concern should be focused not on carriers that seek out customers that primarily originate traffic, but rather on customers who primarily

support for the notion that the local loop is a common cost incurred in the provision of multiple services.

⁷ *Local Competition First Report and Order*, para. 1112.

terminate traffic on another carrier's network. These are two different things. For example, it is clearly possible for a single customer (such as a telemarketing center) to primarily originate traffic but also have all of that traffic *terminate* on the originating carrier's network. For such a customer, the costs of terminating the traffic are not avoided under bill and keep, and a bill and keep regime does not translate into any type of savings or windfall for the originating carrier. But for a customer who primarily terminates traffic on another carrier's network, bill and keep potentially translates into tangible cost savings for its carrier. So the issue is not really the directional flow of an individual customer's calls, but rather their point of termination.

Given this clarification, the Commission's inefficiency argument may be restated as follows -- that a bill and keep arrangement, combined with non-zero termination costs, will cause originating carriers to seek out customers who primarily terminate traffic on another carrier's network. Whether this argument is correct or not, it is obvious that exactly the *opposite* situation exists today as a result of the present reciprocal compensation regime: carriers such as CLECs now seek out customers who primarily terminate traffic *from* other networks in order to receive reciprocal compensation payments. As the Commission has noted in this NPRM (*see, e.g.*, para. 11), this has created arbitrage opportunities, as well as market inefficiencies and market distortions. So the uncertainty before the Commission is: *Would the purported inefficiencies and market distortions that exist under a bill and keep regime be less than or greater than the inefficiencies and market distortions that exist under the current regime?* In order to answer this question it is necessary to examine the market conditions that have allowed

these inefficiencies to occur under the current regime, and whether comparable conditions would actually exist under a bill and keep regime.

Under the existing reciprocal compensation regime, certain carriers have been able to arbitrage the system because they have successfully attracted customers that primarily terminate traffic which originated on another carrier's network. In some cases, the carrier attracted these customers by using reciprocal compensation payments to subsidize lower end user prices for the services purchased by the customers.⁸ The receipt of reciprocal compensation payments thus creates a competitive advantage for the terminating carrier, because the benefit is passed on (at least in part) to the end user through the lower, subsidized service rate.

However, other carriers find that they are unable to avail themselves of this same competitive advantage, and thus may be incapable of attracting that type of customer (*e.g.*, a primarily terminating customer). In the case of a large incumbent LEC, much of the traffic that terminates to the desirable customer might also originate on the LEC's own network, so the termination of traffic would not create an inflow of payments for the LEC. In other words, for such a LEC there is simply no revenue stream to serve as a subsidy to be passed on to the end user in the form of lower prices for services.

Furthermore, because incumbent LECs are often carriers of last resort, they cannot pick

⁸ The assumption here is that the costs of terminating the traffic are less than the reciprocal compensation payments received by the terminating carrier, thus creating a source of cross-subsidy.

and choose which customers they will serve. Although incumbent LECs have the incentive to attract these “primarily terminating” customers in order to avoid paying termination charges to other carriers, they face a competitive disadvantage. The result, and the situation we see today, is competitive non-neutrality.

This lack of competitive neutrality does not, however, arise under a bill and keep regime. A customer that originates and terminates traffic on Carrier A’s network causes Carrier A to incur both origination and termination costs; however, a customer whose calls terminate on another network causes Carrier A to incur only origination costs under bill and keep. While this represents a cost savings to Carrier A, and makes such a customer desirable to serve, cost savings are *not* the same thing as additional revenues. Thus, the Commission and interested parties must consider whether these cost savings are enough to make Carrier A actively pursue such a customer, and whether competitive non-neutrality would result.

Sprint believes that the answer to both questions is no, for three reasons. First, the savings associated with a customer who terminates traffic on another network are exactly that, cost savings. They are realized when a transition is made from a reciprocal compensation regime to a bill and keep regime, but they do not apply to new customers acquired after the transition to bill and keep. The following table illustrates this fact. Assume that Carrier A has the choice of serving the three new customers, and that the costs of an originating and terminating minute are equal. Setting aside transport costs, each of the three customers listed in the table below causes Carrier A to incur exactly the same costs under a bill and keep regime:

	Minutes Originating and Terminating on Carrier A's Network ⁹	Minutes Originating on Carrier A's Network, Terminating Elsewhere	Minutes Terminating on Carrier A's Network, Originating Elsewhere
Customer X	100	500	100
Customer Y	400	0	0
Customer Z	0	0	800

Because each of these customers causes Carrier A to incur 800 minutes worth of switching costs, Customer X (who primarily originates traffic) is no more attractive to Carrier A than Customer Y or Z under a bill and keep regime. It is true that the transition to bill and keep would cause Carrier A to realize the largest *savings* on Customer X if it already served that customer, since the cost of terminating Customer X's minutes would no longer be paid by Carrier A. But the transition would not create an incentive for the carrier to seek out Customer X. Therefore, the idea that bill and keep would incent carriers to actively seek to serve customers that primarily originate traffic is incorrect.

Second, if we believe that cost savings would provide an incentive for a carrier to pursue a particular customer type, it is clear that (in the presence of flat rate pricing) a low-volume customer is relatively more attractive to serve than any other. But it is Sprint's experience that carriers do not actively seek out low volume customers, despite the ubiquity of flat rate pricing.

Third, and most importantly, it is doubtful that a carrier could attract a "primarily originating" customer because it is unlikely that the carrier could successfully translate

⁹ Because a calling minute in this column is both originated and terminated on Carrier A's network, a single minute represents two minutes of switch usage. So when summing minutes across columns, to estimate switching costs, the values in this column are doubled.

these cost savings into some type of visible benefit for the customer. The Commission noted (NPRM, para. 38, regarding the separate issue of terminating access monopolies):

Where the terminating carrier is effectively unable to pass on to the calling parties any terminating charges because of flat rate pricing or rate averaging, then the caller sees no market price signals giving them an incentive to avoid those costs.

This sentence, with a few key modifications, applies with equal force to the bill and keep situation:

Where the *originating* carrier is effectively unable to pass on to the calling parties any *savings on* termination charges because of flat rate pricing or rate averaging, then the caller sees no market price signals giving them an incentive to *choose this carrier*.

The only way a carrier could attract “primarily originating” customers is to somehow pass a portion of the cost saving on to the customer, similar to the way “primarily terminating” customers are attracted today. And it is unlikely that a carrier could successfully differentiate itself in this way. Furthermore, the source of the arbitrage that exists under the current reciprocal compensation regime is the fact that, as discussed above, CLECs can offer terminating customers something the ILEC cannot -- subsidized prices of services. If a bill and keep regime is ubiquitous, the originating carrier has nothing to offer the customer that every other carrier cannot also offer the customer, because the “primarily originating” customer offers the same cost savings to all carriers. There is no competitive advantage, and there is no competitive non-neutrality.

Given these facts, Sprint believes that the Commission’s claim that “originating carriers (and calling parties) would overuse other carriers’ termination facilities” (NPRM, para. 20) under a bill and keep regime is without foundation.

The Commission's concern about the potential inefficiency of a bill and keep regime also was based on an assumption that the calling party is the sole cost causer of a call – a “simplifying” assumption that the Commission acknowledges (para. 19) has been made to “make the analysis more tractable.” Economic efficiency dictates that cost recovery should be aligned, to the extent possible, with cost causation. As discussed below, Sprint agrees that both the calling party and the called party play a role in causing the costs of a call to be incurred, and that a bill and keep regime is therefore consistent with economic efficiency.

Sprint does not agree, however, with the Commission's attempt to correlate cost causation of a call with the benefits that accrue from the call. Whether or not both parties benefit from a call has no bearing on whether or not both parties caused the cost of a call to be incurred.¹⁰ The Commission stated (NPRM, para. 37) that “bill and keep provides a mechanism whereby end users pay for the benefit of making and receiving calls.” Sprint agrees. But the reason it is appropriate that both the calling and receiving party pay for the benefits of a call is that both the calling and receiving party played a role in causing the cost of the call.

The DeGraba bill and keep white paper expounds on the clear distinction between benefit and cost causation. DeGraba acknowledges (para. 117) that some calls do not benefit the called party and are indeed “unwanted calls, such as calls from a telemarketer received during dinner.” This indicates that the benefit (or lack thereof) to the called

¹⁰ To use a non-telecom example, if a neighbor plants a flower garden that enhances the view from another neighbor's window, both neighbors benefit from the garden. Yet only one neighbor caused the cost of planting the garden to be incurred, and it would be

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party depends entirely on the content of the call. Yet the cost incurred in the provision of any call clearly has no relationship to the call's content (aside from the fact that duration, and hence traffic sensitive cost, may be related to content). To posit that the called party should share in the cost of a call because a called party benefits from the call also suggests that somehow the called party should not share in the cost if the called party does not benefit. Aside from the practical impossibility of designing such a regime -- there is simply no way for any regulator or carrier to determine whether or not the called party benefits on a call-by-call basis -- the economic reality is that both parties play a role in causing the costs of the call to be incurred. Therefore, both parties should contribute to cost recovery.

Perhaps the simplest way to discuss the called party's role in causing the cost of a call to be incurred is to look at a typical customer who agrees to have his phone number listed in a white pages directory, or who gives his number out to other parties. By agreeing to have this information available to others, either privately or in public display, the party is tacitly acknowledging that he is willing to participate, in a reactive way, in calls made by other parties to his number. Although he may immediately hang up upon realizing that the caller is an unwanted telemarketer, by making his number known he has sent a signal indicating that he is willing to let the call take place. If this consumer preferred that no call take place except for those that he originated (thereby guaranteeing that he would benefit from the call), he need only ask that his number remain unlisted, or refrain from providing his number to others. So, when a calling party uses this number to

absurd to suggest that the "viewing neighbor" should somehow bear a portion of the cost simply because she benefits from viewing the garden.

call this consumer, it is true that costs are incurred because of the calling party's actions. But it is also true that the costs would *not* have been incurred, because the call would never have been placed, had the called party's number been unavailable.

Any time one individual provides a phone number to another individual in any way, she is acknowledging a willingness to allow a call to be made and in fact *enabling* that call to take place. As such, her actions play a role in causing the cost of a call to be incurred. The call would not take place, and the costs of the call would not have been incurred, if the called party had not taken this enabling action. Thus, it is simply incorrect to assume that 100% of cost causation falls to the calling party.

C. The COBAK and BASICS Approaches Do Not Maximize the Benefits of Bill and Keep.

Sprint's bill and keep proposal for local traffic, described in Section V below, is a hybrid of the two approaches to inter-carrier compensation outlined in the NPRM: Central Office Bill and Keep (COBAK) and Bill Access to Subscribers—Interconnection Costs Split (BASICS). Sprint's proposal incorporates the similar portions of the COBAK and BASICS plans regarding efficient recovery of termination costs. But Sprint's plan offers a unique solution for the recovery of transport costs that is consistent with the intent of the two approaches, and better accounts for the realities of the marketplace while simultaneously striving for economic efficiency.

The COBAK and the BASICS plans are similar in their support for the recovery of termination costs from a network's own end users (NPRM, para. 30), and Sprint supports this method of cost recovery. The key difference between COBAK and BASICS lies in the recovery of transport costs or interconnection costs. COBAK proposes that the calling party's network should be responsible for the cost of

transporting the call to the called party's central office. BASICS proposes that the incremental costs of interconnection be split equally between the two parties, which can be interpreted (in some cases) as an equal division of transport costs (NPRM, para. 46). Sprint's proposal makes each party responsible for the cost of transporting the call on its side of the point of interconnection (POI) for both originating and terminating traffic, subject to certain volume and distance exceptions. The Sprint plan is designed to address certain shortcomings of the COBAK and BASICS approaches.

The COBAK approach to transport costs is sub-optimal because it perpetuates the basic problem inherent in today's reciprocal compensation regime: it requires the calling party to pay for the costs of the called party's network. It is unclear why the logic DeGraba applies to termination costs should not equally apply to transport costs. If it is efficient for a carrier to recover termination costs from the end user receiving the call, why is it not equally efficient for that same carrier to recover the transport costs it incurs from the same end user? Specifically, a portion of the transport costs are *incurred by the called party's carrier, are a function of the terminating carrier's network, and are caused by the process of completing the call*. Sprint believes that allocating all of these costs to the originating carrier is inefficient; therefore, Sprint proposes that transport costs be split at the POI, and recovered by each carrier from the appropriate end user.

DeGraba suggests that splitting the recovery of transport costs would lead to a type of free-rider problem, and that carriers would have an incentive to "drop the call off as soon as possible" on the other carrier's network (DeGraba, para. 68). In reality, this type of opportunistic behavior would be contingent on strategic placement of the POI. But Sprint's proposal reduces the possibility of such opportunism because Sprint's plan

includes requirements regarding POI placement and constraints on distance and traffic that limit any carrier's ability to overuse a connecting carrier's transport. Therefore, the probability that any carrier could "free-ride" in such an opportunistic way is severely reduced. And DeGraba's alternative, placing the entire cost in the calling party, is by his own admission inefficient (NPRM, para. 47).

The BASICS approach, which involves an even split of incremental interconnection costs, is based on a theoretical model of network interconnection and the associated benefits that accrue to parties on the network.¹¹ The problem with this approach is that it mistakenly aligns cost recovery with the *benefits* that accrue to the associated parties, rather than aligning cost recovery with *cost causation* – a situation discussed in Section B above.

The costs that are incurred when a carrier transports traffic are a direct function of the use of the network carrying the call. They do not depend on who benefits from the call. If one carrier's network accounts for the majority of the transport between two end users' central offices, it is *not* the case that the costs are incurred equally or that costs should be recovered equally, because the two networks are not being *used* equally even if both parties benefit equally.

The problem with both COBAK and BASICS is that under each plan, transport costs are being allocated arbitrarily, without regard to causation. Sprint's proposal places the recovery of the costs of using each network with the end user customer of each network. The point where one network ends and another begins is technically the

¹¹ Jay Atkinson and Christopher Barnekov, "*A Competitively Neutral Approach to Network Interconnection*," OPP Working Paper 34, released Dec. 2000, paras. 35-36.

location of the POI and Sprint's plan limits the ability for carriers to act opportunistically with regard to placement of the POI.

III. THE COMMISSION HAS LEGAL AUTHORITY TO ADOPT A BILL AND KEEP REGIME.

The Commission has asked whether it has legal authority “to establish bill-and-keep arrangements for reciprocal compensation between telecommunications carriers,” and “to modify our existing interstate access rules to move them into a bill-and-keep regime” (para. 121). Sprint believes that the Commission does indeed have legal authority to adopt a bill and keep regime.

Section 252(d)(2)(A) of the 1996 Act states that:

For the purpose of compliance by an incumbent local exchange carrier with section 251(b)(5) [obligation to establish reciprocal compensation arrangements], a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

The following section, 252(d)(2)(B)(i), states that the above paragraph “shall not be construed...to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements).” The legislative history states that “mutual and reciprocal recovery of costs...may include a range of compensation schemes, such as in-kind exchange of traffic

without cash payment (known as bill-and-keep arrangements).”¹² Thus, it is clear that a system of bill and keep is explicitly allowed under the 1996 Act. On the basis of this analysis, the Commission has previously allowed state commissions to impose bill and keep arrangements under certain circumstances.¹³

Assuming that state regulations do not forbid LECs from recovering costs of local service (including costs of call termination) from end users, there is no basis for concluding that such an intercarrier compensation regime prevents any carrier from recovering on a “mutual and reciprocal” basis their transport and termination costs associated with calls that originate on one network and terminate on another network. There would seem to be no reason why the cost of terminating a call which originated on the network of another carrier should be higher than the cost of terminating a call which originated on the same network. Thus, to the extent that a carrier is able to recover from its end user customers the costs of terminating calls that originate over its own network, the carrier should be equally able to recover from its end user customers the costs of terminating calls that originated on another carrier’s network. In view of the near ubiquity of flat-rate local pricing, there is no reason to assume carriers cannot be fully compensated from retail rates for the costs of the services they provide (including terminating calls, whether those calls were originated on their own networks or on networks of other carriers). The ability to recover their costs in such circumstances renders bill and keep a sufficient mechanism for “mutual” cost

¹² Joint Explanatory Statement at 7.

¹³ *Local Competition First Report and Order*, para. 1111.

recovery and, under Section 252(d)(2)(B)(i), permits the offsetting of any reciprocal obligation to pay compensation that might otherwise exist.

If, however, the Commission is concerned that Section 252(d)(2)(B) does not confer upon it legal authority to adopt a bill and keep regime, it could rely upon its authority under Section 10 of the Act to forbear from applying requirements relating to reciprocal compensation. Such forbearance satisfies the three-part test set forth in Section 10:

Enforcement is not necessary to ensure that the charges, practices, classifications or regulations are just and reasonable or not unjustly or unreasonably discriminatory:

Under bill and keep, carriers recover their transport and termination costs from their own customers. Because such a cost recovery mechanism does not involve other carriers, it minimizes the opportunity for one carrier to discriminate against another carrier: it cannot allocate unreasonable common costs or otherwise cross-subsidize one service at the expense of customers of another service. Thus, enforcement of reciprocal compensation mechanisms is not necessary to prevent unjust rates or unreasonable discrimination.

Enforcement is not necessary for the protection of consumers: Bill and keep redistributes the way costs are recovered (from interconnecting carriers, who then pass the costs on to their end user customers, to a carrier's own end users); it does not create new costs, and consumers are, in aggregate, no worse off under bill and keep than they would be under existing intercarrier compensation schemes. Indeed, to the extent that a bill and keep plan reduces billing and measurement costs, or generates other economic efficiencies, it may even reduce overall costs, to the presumed benefit of consumers.

Forbearance is consistent with the public interest: As shown in Section II above, bill and keep offers substantial economic efficiencies and involves only minimal potential economic inefficiencies. Further, by requiring carriers to obtain all their revenues from end-user customers, forbearance will promote competition (*see* Section 10(b)), because it will force all carriers to focus their efforts on offering consumers the best possible service at the lowest possible price, a competitive focus that is much diminished in large measure from intercarrier compensation schemes.

IV. BILL AND KEEP SHOULD NOT BE IMPLEMENTED FOR ACCESS TRAFFIC AT THE PRESENT TIME.

The Commission has stated (para. 97) that it “do[es] not anticipate implementing major changes to our access charge rules in the initial phase of this proceeding,” noting that the CALLS plan will not be fully phased in until June 30, 2005, and that it is considering access reform for non-price cap LECs. Sprint agrees that it is premature to replace the access charge regime with a bill and keep compensation plan at the present time, for several reasons. First, there is no assurance that interstate and intrastate access charges will be handled similarly (under the same intercarrier compensation scheme, and along the same time lines); jurisdictional issues must be resolved to minimize customer confusion, administrative expenses, and jurisdictional reporting abuses. Second, the rate increases incurred by consumers resulting from a shift from switched access charges to end user charges are likely to be perceived at least by some consumers as significant. Furthermore, to the extent that state commissions are unwilling to allow local carriers to increase their rates to reflect the costs currently recovered in intrastate access charges, a switch to a bill and keep regime will not afford local carriers with an opportunity to recover their legitimate costs of providing service. Third, a switch to bill and keep has

implications for the use of special access facilities. Finally, as the Commission points out, plans to remove existing implicit subsidies from interstate access rates (the CALLS plan and the MAG plan currently under consideration) are subject to different timelines. A shift to a bill and keep regime for some but not all LECs presents implementation issues which must be carefully considered.

A. Parallel Treatment of Interstate and Intrastate Access Traffic

In the instant NPRM, the Commission has correctly emphasized the need to “cooperate with the states” and “not interfer[e] with legitimate state policies” (para. 122). Sprint recommends that any transition from an access charge to a bill and keep regime be implemented in the federal and state jurisdictions simultaneously, since a jurisdictionally bifurcated approach is likely to have the following adverse impacts:

Greater customer confusion: If the Commission were to adopt a bill and keep regime to replace interstate access charges (other than transport charges), while some or all of the state regulatory authorities choose to remain with an intrastate access charge system, customer confusion will occur as regards the pricing of various toll services. Interstate rates assessed by the IXC would be reduced significantly to reflect the shift of non-transport access expenses to end user charges; not so intrastate toll charges, which will have to continue to recover the often substantial intrastate access charges. This could result in a substantial widening of the typical spread that now exists between charges for in-state and interstate toll calls.

Increase in carriers’ administrative costs: To the extent that local and long distance carriers must maintain accounting records, back office systems, and subscriber calling plans for two different access cost-related regimes (bill and keep for federal access

expense, access charges for some or all intrastate access expenses), administrative costs are likely to rise.

Increase in jurisdictional reporting abuses: If interstate access expenses are at or close to zero, while intrastate access expenses remain close to their current level, there would be an increased incentive to engage in PIU (percentage interstate use) reporting abuses as carriers attempt to minimize their access expense by claiming as interstate minutes of use which are actually jurisdictionally intrastate.

B. End User Rate Increases

If the Commission and the states were to replace switched access charges with a bill and keep regime, originating and terminating access expenses currently recovered from long distance carriers (and ultimately, from charges assessed on the IXC's subscribers) would shift to end users. Therefore, the Commission has asked for comment on the impact a switch to a bill and keep regime would have on end user prices and universal service (para. 123).

Sprint estimates that replacing recent (year 2000) switched access charges with a bill and keep regime would shift approximately \$4-5 per access line per month from IXCs to end users for Tier 1 LECs.¹⁴ The end user charge associated with implementation of a bill and keep plan for rate-of-return LECs is likely to be significantly higher than for Tier 1 LECs, because rate-of-return LECs tend to have higher costs overall and because their access rates still include substantial implicit subsidies. These new bill and keep end user charges would be in addition to existing end user charges such

¹⁴ This estimate is based on data included in 2000 ARMIS 43.03 (revenue) and 43.08 (access line) reports.

as the subscriber line charge, and would be lower if bill and keep is deferred until full implementation of CALLS and appropriate access reform for rate-of-return LECs.

Any increase to end user charges raises controversy and concerns about its impact on affordability and universal service. Federal and state regulators must bear in mind that the expenses underlying a bill and keep end user charge are legitimate costs incurred in the provision of access services, and that LECs must be afforded a reasonable opportunity to recover these costs. If the Commission is concerned about consumer rate shock, it could phase in a bill and keep regime to replace interstate access charges over a multi-year period. Should the Commission conclude that bill and keep end user charges constitute an unacceptable burden for some consumers (*e.g.*, those with low incomes), it must be aware that any increase in universal service funding requirements will ultimately be borne by other consumers. Issues such as these highlight the need for additional analysis of the impact a shift in cost recovery from access charges to bill and keep charges would have on end user rate levels and on universal service.

C. Impact on Use of Special Access

Today, IXC's determine whether it is economic to use a special access circuit rather than switched access based on the volume of traffic to be sent over the facility, the level of the switched access per minute of use charges, and the flat rated special access charges. IXC's also may order high capacity (*e.g.*, DS-3) special access facilities to carry both switched and dedicated traffic to their POPs. Implementation of bill and keep for switched access would radically change the economics of the switched versus special access decision for IXC's and their customers. Before replacing the current access charge

system with a bill and keep regime, the Commission must analyze the financial implications and the effect on network efficiency resulting from a change in IXCs' use of special access facilities.

For example, implementation of bill and keep for switched (but not special) access charges will encourage a migration from special access to switched access facilities. The Commission and interested parties must consider whether adequate switching capacity is available to handle the additional usage or whether the public switched network would be adversely impacted in any way.

D. Application of Bill and Keep to Price Cap and Rate-of-Return LECs

The Commission has asked whether it should apply bill and keep to all LECs at the same time and in the same manner, assuming that it were to adopt such a compensation regime (para. 97). Sprint recommends that any switch from an access charge regime to a bill and keep regime should be implemented for price cap and rate-of-return LECs simultaneously. As was the case with jurisdictional treatment of access traffic, having two different intercarrier compensation mechanisms will increase carriers' administrative costs and will likely engender customer confusion about rate levels and rate structures. For example, it is not clear how an IXC could assess different rates for different subscribers (much less the same subscriber on a call-by-call basis) depending upon whether a call originates in a bill and keep (*e.g.*, price cap LEC) region and terminates in an access charge (*e.g.*, rate-of-return LEC) region.

Adoption of a bill and keep regime for price cap LECs on a different timeline than applies for rate-of-return LECs also has implications for IXCs' rate averaging obligations under Section 254(g). For example, consumers whose calls originate and terminate

primarily in areas served by bill and keep LECs are entitled to long distance rates which do not include switched access expense. Consumers whose calls originate and terminate primarily in areas served by LECs under the existing access charge regime would pay long distance rates which do recover access expenses. However, in order to comply with Section 254(g), IXCs must charge an averaged, blended rate to all consumers, which shifts (to a much greater degree than is true today) substantial costs from end user customers of rate-of-return (access regime) LECs to end user customers of price cap (bill and keep) LECs.

* * * * *

Adoption of a bill and keep regime for access charges raises a number of complicated questions and serious potential dislocations which must be carefully considered. These issues are not relevant to (or far are less serious as regards) local and ISP-bound traffic. Therefore, Sprint recommends that the Commission concentrate its efforts on the expeditious implementation of a bill and keep regime for local traffic, and convene a Federal-State Joint Board (given the complicated jurisdictional issues to be considered) to consider the adoption of bill and keep for access traffic in a future phase of this proceeding. That phase can reasonably be taken up in mid-year 2003, the half-way point for full implementation of the CALLS plan. At that point, the Commission and interested parties will have a better understanding of the impact of access reform (certainly for price cap LECs, and hopefully for rate of return LECs as well) on rate levels and universal service, and perhaps even some experience with bill and keep of local traffic as well. Such knowledge can only contribute to the smooth implementation

of bill and keep for access traffic, should the Commission ultimately decide that such a course is in the public interest.

V. RECOVERY OF TRANSPORT COSTS SHOULD BE BASED ON THE JURISDICTIONAL NATURE OF THE TRAFFIC, THE VOLUME OF TRAFFIC, AND THE DISTANCE BETWEEN THE POINT OF INTERCONNECTION AND THE ORIGINATING END OFFICE.

The Commission has requested comment on the allocation of transport costs between interconnected carriers, correctly recognizing that this is an issue under the current reciprocal compensation rules (NPRM, paras. 112-113) and under bill and keep (para. 70). In Sprint's experience as an ILEC, a CLEC, and a CMRS carrier, the Point of Interconnection (POI) issue is one of the most contentious issues in interconnection negotiation and arbitration proceedings. Resolution of this issue has varied widely among carriers and across states. For example, the North Carolina Commission ruled that it is the ILEC's duty to bear the costs of the transport to the POI inside the local calling area, and that it is the CLEC's obligation to bear the transport costs to the POI outside the local calling area. In addition, BellSouth has agreed to pay for some of the transport costs outside the local calling area, within certain limitations. In contrast, the New York Commission has ruled in Case 01-C-0095 that each party is responsible for the costs associated with the traffic that their respective customers originate until it reaches the POI. This disparity highlights the need for a national rule for determining POIs and the allocation of transport costs between interconnecting carriers. A national rule will provide certainty, help ensure competitive equity across regions and carriers, and simplify the interconnection negotiation process, thereby facilitating competitive entry.

The Commission's existing rules require CLECs and CMRS carriers to establish a minimum of one POI in each LATA in which they wish to exchange local traffic. The

rules also prohibit an ILEC from charging a CLEC or CMRS carrier for traffic originating on the ILEC network. In some circumstances, these rules work reasonably well. Under a “Calling Party’s Network Pays” (CPNP) regime (*i.e.*, reciprocal compensation), where traffic is roughly balanced, both carriers have an incentive to interconnect in the most efficient manner, since each effectively bears half the cost of such interconnection. However, where traffic is highly unbalanced, the cost of interconnection is borne primarily, if not exclusively, by the originating carrier, and the terminating carrier has no incentive to deploy its POI to minimize the originating carrier’s transport cost. A bill and keep regime, where each carrier bears the cost of transporting its originating traffic to the POI, creates an incentive for both carriers to locate the POI in order to minimize their transport costs.

Whether the Commission adopts bill and keep, as Sprint advocates, or maintains the current CPNP regime, it is paramount that the Commission provide more definitive default rules for the obligations of carriers in the establishment of POIs and the responsibility of each carrier for transport costs for interconnection. Due to the State commissions’ disparate treatment of transport obligations and the importance of this issue for competitive providers, Sprint encourages the FCC to promptly resolve the transport issue as outlined below.

A. The Sprint Plan

Sprint believes the following proposal provides a reasonable and workable allocation of the costs of interconnection.

First, the Commission should retain its current rule requiring a CLEC or CMRS carrier to establish one POI in each LATA in which it wishes to exchange local traffic.

The POI should be defined as a point of interconnection consistent with Rule 51.305(a)(2).¹⁵

Second, if the POI is located within the local calling area of the originating end office, the ILEC should be responsible for the cost of transporting its originating traffic to the CLEC or CMRS POI. Traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, is local traffic for purposes of intercarrier compensation.¹⁶ Accordingly, for wireless traffic, an ILEC must bear the cost of transport to the CMRS carrier's POI so long as the traffic remains within the MTA.¹⁷ Because CMRS carriers generally originate more traffic than they terminate, and because wireless carriers generally exchange large volumes of local voice traffic, CMRS carriers and ILECs have had less difficulty establishing agreed upon points of interconnection.

Third, if the call originates outside the local calling area where the POI is located, the ILEC is responsible for the costs of transport to and from that POI, with certain limits. Sprint believes the agreement it negotiated with BellSouth provides a reasonable template for defining these limitations for CLEC traffic.

¹⁵ This proposal relates to the obligation to pay for transport to the Point of Interconnection, and does not address the shared cost of interconnection facilities. *See Local Competition First Report and Order*, para. 1062.

¹⁶ 47 C.F.R. §51.701(b)(2).

¹⁷ *See TSR Wireless LLC v. U.S. West Communications, Inc.*, FCC Docket E-98-13, released June 21, 2000, para. 31, "a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules."

Under this agreement, a minimum of one physical POI should be established in each LATA in which the CLEC originates, terminates or exchanges local traffic or ISP-bound traffic and interconnects with the ILEC. The CLEC may designate a POI for the delivery and receipt of traffic at any existing IXC Point of Presence (POP) location, or if not at an existing IXC POP, at a location that is within five miles of an ILEC tandem or end office. Additional POIs in a particular LATA may be established by mutual agreement of the CLEC and ILEC. Absent mutual agreement, the ILEC may require the CLEC to establish additional points of interconnection in a LATA if the traffic between the CLEC and ILEC at the proposed additional point of interconnection exceeds 8.9 million minutes of local or ISP-bound traffic per month (approximately one DS3 worth of traffic), for three consecutive months;¹⁸ however, the additional POI must be more than 20 miles from an existing POI. A POI will not be designated at a tandem or end office switch where physical or virtual collocation space or ILEC fiber connectivity is not available. Finally, the CLEC should never be required to have more than one point of interconnection in a single local calling area.

To summarize, the CLEC would be responsible for the ILEC's transport costs to the POI when all three of the following criteria are met:

- 1) The POI is not located within the local calling area; and
- 2) The traffic between the originating end office and the POI exceeds 8.9 million MOUs per month (one DS3); and
- 3) The two points (the POI and the end office from which the traffic originated) are more than 20 miles apart.

¹⁸ BellSouth assumes 13,300 minutes per DS0 equivalent ($13,300 \times 672 =$ approximately 8.9 million minutes).

The ILEC is responsible for bearing the cost of its transport if any of the following criteria are met:

- 1) The call originates within the same local calling area as the POI; or
- 2) The call originates outside the local calling area, and total traffic volume between the POI and the originating end office is less than 8.9 million minutes (one DS3) per month; or
- 3) The call originates outside the local calling area, and the distance between the POI and the originating end office is less than 20 miles.

This agreement balances two considerations. First, it is unreasonable to require CLECs to establish POIs in each and every ILEC local calling area -- in effect, to replicate or “overconnect” with the ILEC network. Second, it is equally unreasonable to require the ILEC to bear the costs of transport to the CLEC POI irrespective of volume of traffic or distance, if the traffic terminates to a POI outside the originating local calling area.

Finally, the Commission should make clear in its rules that these requirements apply equally to indirectly connected carriers. In many instances, there are multiple ILECs serving portions of a local calling area. This is particularly true for wireless traffic which is local if it originates and terminates within the same MTA. It would be highly inefficient and anti-competitive to require a CLEC or CMRS carrier to interconnect directly with each and every ILEC in a local calling area, or even a LATA.

Many rural ILECs have attempted to avoid the obligation to connect indirectly with both CLECs and wireless carriers. It is not uncommon for rural LECs to insist that any traffic which enters or leaves their exchanges is toll traffic and thus not subject to reciprocal compensation and interconnection obligations. For example, some carriers argue that existing LEC connections can only be used for exchange access and cannot be used to exchange local traffic. Other carriers insist that all traffic destined for carriers

with points of interconnection outside their exchange must be handed to an interexchange carrier. The Commission should again clarify that interconnection can be either direct or indirect, and that local traffic should be treated as local and not access.

As in the case of an ILEC that is directly interconnected with a CLEC or CMRS carrier, the indirectly interconnected ILEC should be responsible for bearing the costs of transporting traffic to a CLEC or CMRS carrier's POI within that local calling area (and, in the case of wireless calls, traffic within the MTA). However, if the CLEC's POI is outside the local calling area, and its interconnected local traffic exceeds the volume and distance thresholds described above, the CLEC would bear the cost of transport from the indirectly interconnected ILEC's service boundary. While this applies equally to all ILECs, it certainly provides protection to the small, rural ILECs who are less likely to be directly interconnected with the CLEC. A critical component of this proposal is a requirement for the ILEC that is directly connected to the CLEC or CMRS provider to provide the "transiting" or indirect interconnection function for the subtending ILEC and CLEC or CMRS provider.

B. Transiting Carrier Obligations

As discussed above, it would be inefficient and anti-competitive to require a CLEC or CMRS provider to directly interconnect with every ILEC (and every other CLEC and CMRS carrier) in a LATA. Indirect interconnection or transiting is therefore essential to the development of a competitive marketplace. However, some RBOCs have refused, or have announced their intention to refuse, to provide such indirect

interconnection.¹⁹ Such refusal is a violation of their statutory obligations as well as the Commission's implementing regulations.

Section 251(a)(1) of the 1996 Telecommunications Act specifically requires all carriers "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." An indirect interconnection is one in which two parties are connected through another carrier's network. The Commission has affirmed the need for indirect interconnection, stating that indirect interconnection provides an economic alternative for carriers that do not have market power, and refusing to order direct interconnection for such carriers (*Local Competition First Report and Order*, para. 997).

Section 251(c)(2)(B) also obligates ILECs to allow interconnection at any technically feasible point for both telephone exchange (local) and exchange access (toll) traffic. Interconnection at a tandem is technically feasible (see Section 51.305(a)(2) of the Commission's Rules). By definition, interconnection at a tandem switch provides access to the tandem switching functionality by connecting the requesting carrier with all the end offices subtending the tandem. Thus, by extension, it is logical to require access to subtending end offices not owned by the tandem provider. Although the non-ILEC is not subject to the Section 251(c) expanded interconnection obligations, a non-ILEC is still obliged to support indirect interconnection.

The Commission should affirmatively require ILECs to perform such transiting functions for indirectly interconnected carriers. Correspondingly, the Commission must

¹⁹ See, e.g., testimony of Verizon witness Peter J D'Amico, p. 19, in the Maryland Arbitration between Verizon and Sprint (Case No. 8887).

recognize the right of a transiting carrier to recover the costs of performing that function, even under a bill and keep regime. Compensation should be at TELRIC rates.

VI. USE OF VIRTUAL NXXs FOR ISP-BOUND TRAFFIC SHOULD BE ALLOWED.

The Commission has sought comment on the circumstances under which LECs should be allowed to use virtual central office codes (NXXs), the transport obligation of the originating LEC if a virtual NXX code is used, and the obligation of the LEC using the virtual NXX code to provide transport from the central office associated with that NXX code (NPRM, para. 115). As discussed below, the Commission should find that carriers may use virtual NXX codes to provide dial-up service to end users for ISP-bound traffic.²⁰

Virtual NXXs have been used by CLECs primarily to provision service for ISP-bound traffic.²¹ Rather than incur high collocation costs, CLECs have established virtual NXXs – they assign a block of numbers to a particular rate center so that for rating purposes it looks as if the number terminates at that end office – and transport the traffic to the physical point of interconnection. This allows the CLEC to provide local dial-up ISP service to end users at a retail rate which is far lower than would result if the CLEC incurred the high costs of collocating at multiple ILEC end offices.

²⁰ The Commission has stated that intercarrier compensation for ISP-bound traffic would be governed for the next 3 years by the plan adopted in the *ISP Intercarrier Compensation Order* (n. 1 *supra*). Sprint has grave misgivings about a key element of that plan, namely, the growth/new market restriction, and believes that there is no reason why bill and keep should not apply to ISP-bound traffic on the same timeline as applies to any other local interconnected traffic.

²¹ Insofar as Sprint is aware, CLECs are using virtual NXXs only to handle ISP-bound traffic.

The FCC has noted (*id.*) that the Maine PUC found that virtual NXXs were being used to provide “unauthorized interexchange service” rather than permissible facilities-based local exchange service.²² However, subsequent to the Maine decision, the FCC found that the delivery of ISP-bound traffic was neither “telephone exchange service” (*i.e.*, local traffic) nor “exchange access” (*i.e.*, toll or interexchange traffic), but rather information access under section 251(g) of the 1996 Act.²³ Given this FCC ruling, the Maine PUC order cannot be the basis for forbidding the use of virtual NXXs for ISP-bound traffic.

The Maine Order also forced Brooks Fiber to return NXX codes it was using to provide the purported “interexchange” service, based on the Maine PUC’s finding that the FCC’s Central Office Code Administration rules allow use of the code only to provide local service. However, the Maine PUC’s interpretation of the CO Code Administration rules is incorrect. These rules require that applicants for numbering resources use the NXX code to provide “service in the area for which the numbering resources are being requested;” the rules do not state that such service must be local. Although it seems clear that the rules allow carriers to request and use CO codes to provision information services to end users, Sprint requests that the FCC make this finding explicit to avoid confusion and to help ensure that dial-up ISP service remains

²² Investigation into the use of Central Office Codes (NXXs) by New England Fiber Communications, LLC d/b/a Brooks Fiber, Docket No. 98-758, Order Requiring Reclamation of NXX Codes and Special ISP Rates by ILECs, Order No. 4 at 4 ((June 30, 2000).

²³ *ISP Inter-carrier Compensation Order* at para. 30. While the FCC established an interim compensation mechanism in this order, it left undisturbed all other obligations under Part 51 rules relating to ISP-bound traffic (*id.*, footnote 149).

affordable to end users throughout the nation.

As is the case for transport traffic generally, Sprint does not believe that ILECs should be responsible for 100% of the transport costs from the virtual NXX rate center to the point of interconnection. Instead, Sprint recommends that ISP-bound traffic be subject to the same requirements set forth in Section V above: if the virtual NXX code is deployed in a rate center that is within the local calling area of the point of interconnection, the ILEC should be responsible for the associated transport costs. If the virtual NXX code is deployed in a rate center that is not within the local calling area of the point of interconnection, the CLEC would be responsible for the transport costs if the traffic volume between the two points is greater than 8.9 million minutes of use per month and the distance between the two points is greater than 20 miles. In all other situations, the ILEC would be financially responsible for the transport costs. As explained above, this compromise provides a reasonable safeguard for the ILEC by placing distance limitations on its provision of transport over long distances, while allowing CLECs an efficient market entry alternative without incurring unnecessary and uneconomic collocation costs. Thus, the proposal is clearly in the public interest.

VII. CMRS CARRIERS ARE ENTITLED TO RECEIVE COMPENSATION IN THE FORM OF ACCESS CHARGES WHEN PROVIDING ACCESS SERVICES TO INTEREXCHANGE CARRIERS.

In paragraph 94 of the NPRM, the Commission has solicited comment on “whether access charges, when they apply to interexchange traffic under sections 201, 251(g) and 251(i), should also apply to CMRS carriers, and to what extent.” The Commission also asks (*id.*) “...whether CMRS carriers are entitled to receive access charges, or some additional compensation, for interexchange traffic terminating on their

networks.” As discussed below, Sprint believes that CMRS are entitled to assess access charges for access services provided to IXCs.

Under existing statutory law and Commission rules, CMRS carriers are entitled to receive compensation from interexchange carriers when those interexchange carriers terminate traffic onto a CMRS carrier’s network. Under the Act and the Commission’s Orders, CMRS providers are common carriers and provide access services. Under Section 201 of the Act, CMRS carriers are both entitled and required to establish just and reasonable charges for the provision of that access service. Although the Commission has forborne from requiring CMRS carriers to file access tariffs, nowhere has it suggested that CMRS carriers should not be compensated for providing such access services; indeed, a Commission mandate that CMRS carriers provide such services without compensation when other carriers are allowed to charge for access would be patently arbitrary.

47 U.S.C. 332 (c)(1)(A) provides that “[a] person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this Act, except for such provisions of Title II as the Commission may specify by regulation as inapplicable to that service or person.” The Commission has held that one of the services CMRS carriers provide is access service, stating that:

CMRS providers meet the statutory definition of “telecommunications carriers.” We also agree with several commenters that many CMRS providers (specifically, cellular, broadband PCS and covered SMR) also provide telephone exchange service **and exchange access** as defined by the 1996 Act.²⁴

²⁴ *Local Competition First Report and Order* at para.1012, emphasis added.

Throughout the *Local Competition First Report and Order*, the Commission carefully distinguished between IXC's and local access providers, stating that "an IXC that requests interconnection to originate or terminate an interexchange toll call is not "offering" access services, but rather is "receiving" access services."²⁵ The Commission specifically rejected AT&T's assertion that it was entitled to local reciprocal compensation rates under the interconnection provisions of §§ 251 and 252:

We conclude, however, that an IXC that requests interconnection solely for the purpose of originating or terminating its *interexchange* traffic, not for the provision of telephone exchange service and exchange access to others, on an incumbent LEC's network is not entitled to receive interconnection pursuant to section 251(c)(2).... [A]n IXC that seeks to interconnect solely for the purpose of originating or terminating its own interexchange traffic is not offering access, but rather is only obtaining access for its own traffic.²⁶

The Commission further emphasized that access charges continued to be appropriate with respect to interexchange carriers:

Access charges were developed to address a situation in which three carriers – typically, the originating LEC, the IXC, and the terminating LEC – collaborate to complete a long distance call. As a general matter, in the access charge regime, the long-distance caller pays long distance charges to the IXC, and the IXC must pay both LECs for originating and terminating access service.²⁷

Given the Commission's finding that CMRS carriers provide access services, it necessarily follows that CMRS carriers are entitled recover access charges from IXC's that use their networks to terminate their interexchange traffic. Indeed, the Commission contemplated this very situation when it noted: "Under our existing practice, most traffic

²⁵ *Id.* at para. 186.

²⁶ *Id.* at para. 191.

²⁷ *Id.* at para. 1034.

between LECs and CMRS providers is not subject to interstate access charges *unless it is carried by an IXC*²⁸

Despite this clear law, some interexchange carriers have asserted that CMRS providers are not entitled to be compensated for the use of their networks. These carriers point to the Commission's 1994 Order relieving CMRS carriers from the obligation to file access tariffs.²⁹ Specifically, these carriers argue that CMRS carriers cannot charge for the access services they provide because they are prohibited from filing access tariffs. This argument is patently illogical. The fact that CMRS carriers cannot file tariffs does not mean that CMRS carriers are not entitled to be compensated for the services they provide. Indeed, the rule not only prohibits CMRS providers from filing access tariffs, but tariffs of all kinds, including tariffs governing interstate service to their customers. Taken to its logical conclusion, the argument of these IXCs would mean that CMRS carriers could not charge their own customers for the services they provide. Moreover, the argument completely ignores the reason the rule was put in place.

The Commission discussed at length the reasons for eliminating tariff filings in the mobile service arena:

In a competitive environment, requiring tariff filings can (1) take away carriers' ability to make rapid, efficient responses to changes in demand and cost, and remove incentives for carriers to introduce new offerings; (2) impede and remove incentives for competitive price discounting, since all price changes are public, which can therefore be quickly matched by competitors; and (3) impose costs on carriers that attempt to make new offerings. Second, tariff filings would enable carriers to ascertain competitors' prices and any changes to rates, which might encourage carriers to maintain rates at an artificially high level. Moreover, tariffs

²⁸ *Id.* at para. 1043, emphasis added.

²⁹ *Implementation of Sections 3(N) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order* (released March 7, 1994), 9 FCC Rcd 1411 (1994), codified at 47 C.F.R. §20.15(c).

may simplify tacit collusion as compared to when rates are individually negotiated, since publicly filed tariffs facilitate monitoring. Third, tariffing, with its attendant filing and reporting requirements, imposes administrative costs upon carriers.³⁰

In prohibiting CMRS carriers from filing access tariffs, however, the Commission explicitly acknowledged that CMRS carriers provide access services:

“[W]e will forbear from requiring or permitting tariffs for interstate service offered directly by CMRS providers to their customers. **We also will temporarily forbear from requiring or permitting CMRS providers to file tariffs for interstate access service. At this time, because of the presence of competition in the CMRS market, access tariffs seem unnecessary.** We recognize, however, that there may be other public interest factors that would make forbearance with respect to interstate access service inappropriate. As such, we will look at this question in more detail in proceeding addressing interconnection issues and equal access.”³¹

As promised, the Commission subsequently opened a docket to address local interconnection matters, including the provision of access.³² In that NPRM, the Commission tentatively concluded that CMRS providers should be permitted to recover access charges from IXC:

[W]e tentatively conclude that CMRS providers should be entitled to recover access charges from IXCs, as the LECs do when interstate interexchange traffic passes from CMRS customers to IXCs (or vice versa) via LEC networks. We propose to require that CMRS providers be treated no less favorably than neighboring LECs or CAPs with respect to recovery of access charges from IXCs and LECs for interstate interexchange traffic. We tentatively conclude that any less favorable treatment of CMRS providers would be unreasonably discriminatory, and would interfere with our statutory objective and ongoing commitment to foster the development of new wireless services such as CMRS.³³

³⁰ *Id.* at para. 177.

³¹ *Id.* at para. 178, emphasis added.

³² *In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers*, Notice of Proposed Rule Making adopted December 15, 1995 (Docket 95-185), 11 FCC Rcd 5020 (1995).

³³ *Id.* at para. 116.

Before the Commission took final action in response to this NPRM, the 1996 Telecommunications Act was passed and this proceeding was consolidated with CC Docket 96-98. The Commission then released its *Local Competition First Report and Order* in both dockets. That order, as discussed above, concluded (1) that CMRS carriers provide exchange access and (2) that interexchange carriers must pay access charges, and not reciprocal compensation, for the receipt of exchange access.

As noted above, the Commission asks in the instant NPRM whether CMRS carriers “are entitled to receive access charges, *or some additional compensation*, for interexchange traffic terminating on their networks” (para. 94, emphasis added). In the case of those IXC’s who refuse to remit payment to CMRS carriers for the provision of access services, the CMRS carriers are not receiving any compensation at all. Current interconnection agreements between CMRS providers and LECs explicitly exclude traffic carried by interexchange carriers from the obligations of reciprocal compensation, based upon the language of the *Local Competition First Report and Order* discussed above. If the Commission were to permit IXC’s to terminate traffic to wireless carriers without payment of access charges, it would in effect be requiring CMRS carriers to provide such services for free.

Both the Act and the Commission’s rules acknowledge that CMRS carriers provide exchange access and that CMRS carriers are entitled to be compensated for the provision of this service. Accordingly, the Commission should affirm that CMRS carriers are entitled to compensation for the provision of exchange access to IXC’s so long as the access charge regime is in place. Any other result would unfairly discriminate

against CMRS carriers and result in the type of regulatory arbitrage the Commission is seeking to eliminate.

VIII. CONCLUSION.

Sprint believes that adoption of a bill and keep regime for local traffic, including interconnected local calls to ISPs, will generate significant public interest benefits, and that concerns about the inefficiencies of such a regime are exaggerated. However, adoption of a bill and keep regime for access charges at the present time is premature; complicated questions regarding the parallel treatment of interstate and intrastate access charges; end user rate increases; impact on the public switched network of a shift from special to switched access facilities; and the coordinated application of bill and keep for price cap and rate-of-return LECs, remain to be addressed. Therefore, the Commission should convene a Federal-State Joint Board to consider implementation of a bill and keep regime to replace access charges in a future phase of this proceeding.

Sprint also presents its plan for allocating the transport costs associated with interconnected local traffic. Under this plan, the ILEC recovers transport costs associated with traffic between the POI and the end office in which the call originated, whenever these two points are within the same local calling area, or, for wireless traffic, the same MTA. The ILEC is also responsible for transport costs associated with interconnected local traffic where the POI is outside the local calling area of the originating end office, provided that such traffic does not exceed 8.9 million minutes (one DS3) per month, and that the distance between the POI and the originating end office is less than 20 miles. If the traffic exceeds 8.9 million minutes and the distance exceeds 20 miles, the CLEC is

responsible for the transport costs. This proposal reasonably balances concerns of both the ILEC and the CLEC.

Sprint further recommends that use of virtual NXXs be allowed for ISP-bound traffic be allowed, and requests that the Commission clarify that its Central Office Code Administration rules allow use of NXXs for this purpose. Finally, the Commission should clarify that CMRS carriers are entitled to receive compensation in the form of access charges when providing access services to interexchange carriers. Such an affirmation of the Commission's previous findings in this regard is necessary to prevent unfair discrimination against CMRS carriers and regulatory arbitrage.

Respectfully submitted,

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August 21, 2001

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT CORPORATION** was sent electronically or by hand to the below-listed parties.

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